

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

BARRY J. WALSH,

Plaintiff and Appellant,

v.

HERBERT M. GELFAND et al.,

Defendants and Respondents.

G041115

(Super. Ct. No. 06CC13349)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Andrew P. Banks, Judge. Appeal dismissed.

Barry J. Walse, in pro. per., for Plaintiff and Appellant.

Morrison & Foerster, Mark C. Zebrowski and Kimberly R. Gosling, for Defendants and Respondents.

THE COURT:*

Appellant Barry J. Walshe filed a motion for declaratory relief regarding whether the notice of appeal was timely filed. We determine it was not, and dismiss the appeal for lack of jurisdiction.

BACKGROUND

On July 7, 2008, the court entered judgment against Walshe for attorney's fees in the amount of \$70,408.75, following his dismissal of his complaint against the defendants. On July 16, defendants served Walshe with a properly designated "Notice of Entry of Judgment." Walshe timely moved for reconsideration of the order granting attorney fees to defendants. On August 22, the court denied the motion for reconsideration in a minute order and directed defendants to give notice.

On August 25, defendants served Walshe by mail with a document entitled "notice of ruling" which stated: "Please take notice that on August 22, 2008, . . . Hon. Andrew P. Banks issued an order confirming his tentative ruling on plaintiff Barry J. Walshe's motion for reconsideration as follows: The motion by plaintiff Barry J. Walshe for reconsideration of the court's . . . orders granting attorney fees is denied. . . ."

On October 14, Walshe filed a notice of appeal from the July 7 judgment. Thereafter, defendants scheduled a judgment debtor's exam. Walshe filed the instant motion, seeking a determination from this court that the notice of appeal is timely and therefore automatically stays enforcement of the judgment under Code of Civil Procedure section 916, subdivision (a). In opposing the motion for declaratory relief, defendants contend the appeal was untimely and should be dismissed for lack of jurisdiction.

DISCUSSION

The applicable deadlines for filing a notice of appeal after filing a motion to reconsider an appealable order are as follows: "If any party serves and files a valid

* Before Sills, P.J., Moore, J., and Fybel, J.

motion to reconsider an appealable order under Code of Civil Procedure section 1008, subdivision (a), the time to appeal from that order is extended for all parties until the earliest of: (1) 30 days after the superior court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order; (2) 90 days after the first motion to reconsider is filed; or (3) 180 days after entry of the appealable order.” (Rules of Court, rule 8.108(e).)¹

Here, the notice of appeal was filed 50 days after service of the notice of ruling on the motion for reconsideration. Consequently, the notice of appeal was untimely under rule 8.108(e)(1).

Walshe’s sole argument to save his appeal is that the 30-day filing deadline in rule 8.108(e)(1) is inapplicable because he was not served with a document that triggered the rule. Specifically, Walshe asserts that the notice of ruling on the motion for reconsideration was ineffective under the rule because (1) it lacked the title “notice of entry of order,” and (2) it did not “indicate[] that the order was entered[.]” The argument is specious.

Contrary to Walshe’s assertion, rule 8.108(e)(1) does not require any particular *title* for a document to trigger the 30-day deadline. (Compare rule 8.104(a)’s explicit requirement of service of a “document *entitled* ‘Notice of Entry’ of judgment or a file-stamped copy of the judgment” to start the 60-day clock for the “normal time” to appeal.) Moreover, the rule does not require that the notice itself contain any particular words. Thus Walshe’s contention that the notice here was ineffective because it “indicates” the order denying reconsideration was *issued* rather than *entered* is meritless.

We find defendants’ service of the notice of ruling on the reconsideration motion triggered the 30-day deadline for filing the notice of appeal under rule

¹ All further rule references are to the Rules of Court.

8.108(e)(1). Consequently, Walshe's notice of appeal, filed 50 days after service of that notice, was untimely.

DISPOSITION

The appeal is dismissed for lack of jurisdiction.